

**Before the
FEDERAL COMMUNICATIONS COMMISSION
Washington, D.C.**

In the Matter of)	
)	
Negotiated Channel Election Arrangement)	FCC File No. BFRECT-20050210ABK
Proposed by WKMG-TV, Orlando, Florida)	MB Docket No. 03-15
(FIN-71293))	
)	

To: Commission's Secretary, Office of the Secretary
Attn: Chief, Media Bureau

**INFORMAL OBJECTION TO DTV CHANNEL ELECTION
AND NEGOTIATED CHANNEL ELECTION ARRANGEMENT**

ZGS Broadcasting of Orlando, Inc. ("ZGS"), licensee of Class A low power television station WTMO-LP, Kissimmee, Florida, by its counsel, hereby submits an informal objection to the above-referenced DTV channel election and associated negotiated channel election arrangement. By its Form 382 filed February 10, 2005, Post-Newsweek Stations, Orlando, Inc. ("Post-Newsweek"), licensee of WKMG-TV, Orlando, Florida, informed the Commission that it had entered into a negotiated channel election agreement with Daytona Beach Community College, licensee of television station WCEU(TV), New Smyrna Beach, Florida.¹ Pursuant to that channel election agreement, WKMG-TV, which is currently allotted NTSC Channel 6 and DTV Channel 58, seeks the reallocation of Channel 15 to Orlando, Florida for WKMG-TV's future DTV operations. Presently, Channel 15 is allotted to New Smyrna Beach, Florida for WCEU(TV)'s NTSC operations, as well as assigned to WTMO-LP in Kissimmee as its displacement channel. As detailed below, ZGS objects to WKMG-TV's proposed use of

¹ FCC File No. BFRECT-20050210ABK.

Channel 15 at Orlando, and respectfully requests that the Commission reject the above-referenced negotiated channel election arrangement and refrain from allocating Channel 15 DTV to Orlando, Florida.

Background

WTMO-LP is a Class A low power television station currently operating on Channel 40 at Kissimmee. For over ten years, WTMO-LP has served as the Telemundo affiliate in the Orlando market providing Spanish-language programming to the growing Hispanic population in the community. As a Class A station, WTMO-LP provides a substantial amount of local programming, including an evening news program that airs Monday through Friday at 6 P.M. and a local public affairs and entertainment program that airs at 6 P.M. on the weekends. In addition, on Sundays, the station provides its audience with six locally produced religious programs. WTMO-LP is an established and valued station in the Orlando market.

Pursuant to the establishment of the first DTV Table of Allotments, the Commission allocated Channel 40 as the paired DTV channel for full power station WACX(TV), Leesburg, Florida.² Given that WACX(TV)'s proposed digital operations on Channel 40 would preclude WTMO-LP from operating on that channel in Kissimmee, WTMO-LP was forced to locate a replacement channel. After conducting an extensive engineering review to find a suitable, in-core channel, WTMO-LP settled on Channel 15 as a viable option to preserve the station's service to the public. In July 2004, ZGS applied for a displacement construction permit to move WTMO-LP's operations to Channel 15.³ Subsequently, on October 4, 2004, the Commission granted WTMO-LP a Class A construction permit, authorizing the station to modify its facilities

² By FCC Form 382 submitted on January 12, 2005, WACX has elected to remain on Channel 40 for its future DTV operations. See FCC File No. BFRECT-20050112AAB.

to broadcast on Channel 15 at Kissimmee. Since obtaining authorization to relocate WTMO-LP's operations to Channel 15, ZGS has been making preparations for this technical change. Now, however, WTMO-LP faces the prospect of being bumped from its authorized channel yet again; this time for a DTV facility that apparently does not comply with the Commission's interference protections.⁴

Discussion

In recognition of the important service and local programming provided by certain low power television stations, Congress enacted the Community Broadcasters Protection Act of 1999 ("CBPA") to afford qualifying low power stations, such as WTMO-LP, primary status as television broadcasters and to grant them a measure of protection from full-service television stations.⁵ The CBPA instructed the Commission to preserve the service areas of Class A stations, and in turn, required that Class A stations provide certain protections to full-power NTSC stations, DTV stations, and the DTV Table of Allotments.⁶ Accordingly, the CBPA and the Commission's Rules implementing the Act prohibit WKMG-TV from causing harmful

Footnote continued from previous page

³ See FCC File No. BPTTA-20040706AAU.

⁴ See Objection to Negotiated Channel Exchange Arrangement, Waterman Broadcasting Corporation of Florida, Inc., MB Docket No. 03-15, submitted March 15, 2005; Comment, Waterman Broadcasting Corporation of Florida, Inc., MB Docket No. 03-15, submitted March 28, 2005. By its Objection and subsequent Comment, Waterman Broadcasting argues that Post-Newsweek's proposal would exceed the 0.1 percent interference limit allowed by the Commission's rules for such changes. In fact, Waterman Broadcasting claims that Post-Newsweek's proposed operations on Channel 15 at Orlando would cause 1.36% new interference to WACX's co-channel operations and thus, cannot be granted.

⁵ Community Broadcasters Protection Act of 1999, Pub. L. No. 106-113, *codified* at 47 U.S.C. § 336(f).

⁶ See 47 U.S.C. § 336(f).

interference to Class A stations, such as WTMO-LP, whose facilities were authorized prior to the modification sought by the full-power station.⁷

While the Commission has recognized that an out-of-core DTV station seeking to replicate its NTSC service area on its assigned in-core channels might be permitted to displace a Class A facility when it moved to its assigned in-core channel,⁸ the same does not hold true for an out-of-core DTV station choosing to move to a channel other than its assigned in-core channel, and with parameters that have not previously been protected. The Commission's Rules state that Class A stations must protect the "DTV service that would be provided by the facilities specified in the DTV Table of Allotments in §73.622 of this part, by authorized DTV stations, and by applications that propose to expand DTV stations' allotted or authorized coverage contour in any direction" if the DTV station had properly notified the Commission of its intent to "maximize."⁹ Indeed, it is this protection requirement that forced WTMO-LP to seek a displacement to Channel 15, as it could not meet the protections to WACX's authorized DTV service on Channel 40. In the instant situation, however, WKMG-TV is not seeking to replicate its NTSC service area on its assigned in-core channel consistent with the facilities specified in the DTV Table of Allotments in §73.622, it is not an authorized DTV station on Channel 15, and it is not seeking to implement a previously filed maximization application. Rather, Post-Newsweek is seeking to acquire a new channel to which it has no rights, with parameters that have never been included in the DTV Table. Furthermore, the channel is currently allocated to Class A station WTMO-LP, to which WKMG-TV must afford protection as a primary station.

⁷ See 47 C.F.R. § 73.613.

⁸ Establishment of a Class A Television Service, Memorandum Opinion and Order on Reconsideration, 16 FCC Rcd 8244, 8270 (2001).

⁹ 47 C.F.R. § 73.6013.

Section 336(f)(1)(D) of the CBPA only permits changes to a full-power station's allotted parameters or channel assignment in the DTV Table of allotments in limited circumstances, specifically as the result of unforeseen technical problems that require an engineering solution to the station's allotted parameters.¹⁰ In this case, WKMG-TV has failed to demonstrate that the substitution of Channel 15 is technically necessary under the Commission's Rules due to an unforeseen technical problem, and indeed, has apparently failed to even address the existence of WTMO-LP's authorization for Channel 15 at all.¹¹ In fact, given the tremendous burden that would be imposed on WTMO-LP and the resulting harm to the public, it is unclear that WKMG-TV could ever demonstrate a technical problem sufficient to justify the displacement of a Class A station.

In implementing the CBPA, the Commission noted that while Section 336(f)(1)(D) permits channel changes in limited circumstances, "in the interest of ensuring efficient spectrum utilization we may question modification requests that unnecessarily impinge on Class A service."¹² In addition, in its Order on Reconsideration, the Commission indicated that "Class A station entities may bring such situations to the Commission's attention through our normal application and allotment processes."¹³ Consistent with the Commission's Orders, ZGS contends that the proposed modification of WKMG-TV would unnecessarily impinge on the

¹⁰ 47 U.S.C. § 336(f)(1)(D); *see also*, Establishment of a Class A Television Service, Report and Order, 15 FCC Rcd 6355, 6381 (2000).

¹¹ To the extent that WKMG-TV is dissatisfied with the potential digital propagation characteristics of Channel 6, any perceived limitation is clearly not "unforeseen" and could have been addressed earlier by a petition for rule making to change WKMG-TV's allotted DTV channel.

¹² Establishment of a Class A Television Service, Report and Order, 15 FCC Rcd 6355, 6381 (2000).

¹³ Establishment of a Class A Television Service, Memorandum Opinion and Order on Reconsideration, 16 FCC Rcd 8244, 8270 (2001).

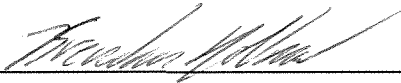
Class A service of WTMO-LP, and urges the Commission to reject the proposed channel change. WKMG-TV already has an allocated in-core channel – NTSC Channel 6 – that could be used for the station’s future DTV operations. Furthermore, WKMG-TV has also been granted the additional option of rejecting Channel 6 and choosing from any available channel in the second round of DTV channel elections. Thus, more efficient and less invasive means exist for WKMG-TV to obtain an in-core channel, either of which avoids the need to displace this primary Class A station providing valuable service to the community.

As discussed above, ZGS has expended considerable time, money, and effort to secure Channel 15 as a replacement channel following its displacement from Channel 40. WTMO-LP has already been victimized by the establishment of the first DTV Table of Allotments, and should not be forced to continue to dodge subsequent changes made at the request of full-power stations. In addition to harming Spanish-language viewers in the market, were the Commission to permit Post-Newsweek to displace WTMO-LP yet again, it would demonstrate a complete failure to protect the capital investment and the primary status of Class A stations. In order to avoid such an inequitable outcome, which would invariably discourage investment in, and expansion of, Class A stations, the Commission should strive to avoid displacing Class A

stations wherever possible. Accordingly, ZGS respectfully requests that the Commission reject Post-Newsweek's proposed use of Channel 15 at Orlando and deny the negotiated channel arrangement.

Respectfully submitted,

ZGS BROADCASTING OF ORLANDO, INC.

By: _____

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Date: April 28, 2005

CERTIFICATE OF SERVICE

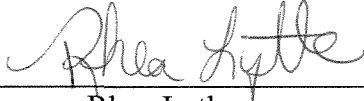
I, Rhea Lytle, a secretary with the law firm of Pillsbury Winthrop Shaw Pittman LLP, do hereby certify that a copy of the foregoing **“INFORMAL OBJECTION TO DTV CHANNEL ELECTION AND NEGOTIATED CHANNEL ELECTION ARRANGEMENT”** to be sent via Federal Express this 28th day of April 2005 to the following:

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